Supreme Court, U.S.
FILED

03 . 908 DEC 20 2003
No.

Lexis

In the

Supreme Court of the United States

DAN RODNEY JOOS,

Petitioner

v.

PIPER C. JOOS (MONTE),

Respondent

On Petition for Writ of Certiorari
To the Utah Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Domestic relations adversarial disputes are a national disgrace. They cause irreparable harm to marriage, families and children. The family is the fundamental unit of society. The U.S. Supreme Court has failed to establish and protect the constitutional and fundamental right of every child to be raised and have a meaningful relationship with each biological parent. As a result, state courts are destroying the institution of marriage.

1. In light of *Troxel v. Granville,* 530 U.S. 57 (2000), whether the Utah Court of Appeals committed constitutional error by giving the domestic relations judges unbridled discretion without being required to give weight to child-rearing decisions made by fit parents.

2. Whether unbridled discretion ("no hint of limitation" *Shinkoskey v. Shinkoskey*, 19P.3d 1005 (2001), together with the Utah Appellate Courts' "abuse of discretion" standard of review, denies parents their due process by denying the right to a meaningful appeal.

3. Does the First Amendment's right "to petition the government for a redress of grievances" protect Petitioner's right to challenge the Court of Appeals failure to apply *Troxel*?

4. Is it an unconstitutional chilling effect on exercise of First Amendment rights for the state court to impose sanctions upon Petitioner for filing a declaratory

judgment lawsuit asking the court to declare the effect of *Troxel* on Utah laws?

5. *Shinkoskey* supra is typical of Utah and other states judicial policy of requiring parents to adversaries, ruling in favor of the mother and pushing fathers out of meaningful relationships with their children. Are not state laws that sweep fathers out of the lives of their children unconstitutional?

6. Whether the Utah Court of Appeals decision violates Petitioner's First Amendment religion rights by failing to protect Petitioner's religious beliefs. Before the state judge, opposing counsel challenged and ridiculed Petitioner's religious beliefs (**"I dispute** his claim that his religion forbids him from being adversary to his wife...."). At oral argument, the Utah Court of Appeals questioned Petitioner's religious beliefs.

7. Whether the Utah Court of Appeals failure to afford Petitioner an effective remedy as to the issues raised, violated his rights under international common law, specifically Articles 8,10,12,16,and 17 of the Universal Declaration of Human Rights.

The caption of the case in this Court contains the names of all parties to the proceedings in the Utah Court of Appeals.

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OPINIONS BELOW

The opinion of the Third Judicial District Court of Salt Lake County, State of Utah dismissing the lawsuit has not been officially reported. The opinion of the Utah Court of Appeals is not officially reported, being a memorandum decision designated "not for official publication" dated June 12, 2003, case No 20011005-CA and is reprinted in the separate Appendix, pages 1-4. The decision of the Utah Supreme Court denying petition for writ of certiorari has not been officially reported and is reprinted in the separate Appendix, pages 4-5.

STATEMENT OF JURISDICTION

The judgment of the Utah Court of Appeals was entered June 12, 2003. The decision of the Utah Supreme Court denying discretionary review was entered September 23, 2003. (See separate Appendix, pages 1-5)

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

The constitutionality of Title 30, Utah Code Annotated 1953, as amended is in question. 28 U.S.C. § 2403(b) may apply and shall be served on the Attorney General of Utah.

CONSTITUTIONAL PROVISIONS
CONSTITUTION OF THE UNITED STATES

Amendment I - Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

AMENDMENT XIV - Section 1.... No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES

UTAH CODE ANNOTATED 1953

Title 30 and 78 provisions are lengthy and are set out in the separate appendix.

DECLARATORY JUDGMENTS
Chapter 33

78-33-1. Jurisdiction of district courts --Form --Effect.

The district courts within their respective jurisdictions **shall have power to declare rights**, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declaration shall have the force and effect of a final judgment or decree. (Emphasis added)

78-33-2. Rights, status, legal relations under instruments or statutes may be determined.

Any person interested under a deed, will or written contract, or **whose rights, status or other legal relations are affected by a statute,** municipal ordinance, contract or franchise, **may have determined any question of construction or validity arising under the** instrument, **statute**, ordinance, contract or franchise **and obtain a declaration of rights**, status or other legal relations thereunder. (Emphasis added)

78-33-12. Chapter to be liberally construed.

This chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; **and is to be liberally construed and administered.**

(Emphasis added)

OTHER

(Emphasis added as briefed to the Utah Court of Appeals)

DECLARATION OF INDEPENDENCE

UNANIMOUSLY PASSED BY THE CONGRESS OF THE THIRTEEN UNITED STATES OF AMERICA, July 4, 1776

When in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another, and to assume among the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature's God entitle them, a decent Respect to the Opinions of Mankind requires that they should declare the causes which impel them to the Separation.

We hold these Truths to be self-evident, that **all Men are created equal**, that they are endowed by their Creator with certain **unalienable Rights**, that among these are Life, **Liberty** and the Pursuit of Happiness - That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that **whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter** or to abolish **it**, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers

in such Form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient Causes; and accordingly all Experience hath shewn, that Mankind are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the Forms to which they are accustomed. **But when a long Train of Abuses and Usurpations, pursuing invariably the same Object, evinces a Design to reduce them under absolute Despotism, it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future Security**. Such has been the patient Sufferance of these Colonies; and such is now the Necessity which constrains them to alter their former Systems of Government. The History of the present King of Great Britain is a History of repeated Injuries and Usurpations, all having in direct Object the Establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid World....

In every stage of these Oppressions **we have Petitioned for Redress in the most humble Terms: Our repeated Petitions have been answered only by repeated Injury**. A Prince, whose Character is thus marked by every act which may define a Tyrant, is **unfit to be the ruler of a free People**....

We, therefore, the Representatives of the UNITED STATES OF AMERICA, in GENERAL CONGRESS, Assembled, **appealing to the Supreme Judge of the World** for the Rectitude of our Intentions, do, in the Name, and by Authority of the good People of these Colonies,

solemnly Publish and Declare, That these United Colonies are, and of Right ought to be FREE AND INDEPENDENT STATES; that they are absolved from all Allegiance to the British Crown, and that all political Connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as FREE AND INDEPENDENT STATES, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which INDEPENDENT STATES may of right do. And for the support of this Declaration, **with a firm Reliance on the Protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.** (Emphasis added)

UNIVERSAL DECLARATION OF HUMAN RIGHTS [1948]

Adopted by the United Nations General Assembly on 10 December 1948. U.S. has signature to this declaration. [internet address: http://www.hri.org/DOCS/UDHR48.html].

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and

obligations and of any criminal charge against him. (Emphasis added)

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 16

1. **Men and women** of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. **They are entitled to equal rights as to marriage, during marriage and at its dissolution.** (Emphasis added)

2. Marriage shall be entered into with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

STATEMENT OF CASE

Petitioner, a fit father, is being denied a close relationship with his son because the Utah statutes challenged deny him his federal constitutional parental rights. State laws need to change to recognize the

fundamental right of children and to permit their biological father to have a meaningful role in raising his children.

Petitioner disputes the first sentence of the Utah Court of Appeals decision (see Appendix, page 1); which claims that the Petitioner "urges us to strike down the entirety of Utah's divorce laws." That statement casts doubt on the entire decision. To the contrary, in his brief to the Court of Appeals, Petitioner carefully listed only the sections of Title 30 that unconstitutionally burdened his federal Parental rights to raise their children. Petitioner also disputes the court's assertion that Petitioner has engaged "oppressive litigation" (see separate Appendix, page 2). Petitioner used Utah's Declaratory Judgment statute (see page 3 herein), in reasonable effort to establish Petitioner's rights, which was the least offensive type of request, which he believed to be a necessary first step before modifying a divorce decree.

The U.S. Supreme Court has held that the U. S. Constitution allows state courts to discriminate against fathers before birth. The result is that Utah and other states fail in their constitutional guarantee to provide equal protection to fathers after birth.

Although a man and a woman make a choice to a relationship that creates human life, this Court holds that only a woman can escape the consequences of that choice.

If the mother allows the baby to live, she expects the father to support that child. Out of three (3) human lives, this Court holds that only the will of the female is

constitutionally protected. After birth, Utah courts continue to discriminate against fathers in favor of mothers. Many of societies ills are the result of children who have been deprived of their right of a close relationship with their fathers. State courts are overburdened with domestic disputes. Instead of determining if parents are fit, states like Utah treat parents as if they are all unfit. Current domestic relations statutes encourage litigation instead of attempting to preserve the marriage and parent/child relationships.

The result is, to expedite court calendars, the constitutional rights of parents to make decisions concerning their children without state interference is regularly abused and denied. Utah law gives the Court unbridled discretion, then uses an abuse of discretion standard of review for appeals, so an appeal is usually a useless act.

In *Troxel v. Granville,* 530 U.S. 57 (2000), this Court reserved for a later decision, application to domestic relations court of the principals related to parent/child relations discussed therein. The time has come to put fit parents back in charge by this Court tackling those issues by boldly striking down state domestic relation laws which trample on the constitutional rights of parents to make decisions concerning their children.

States need guidelines from this Court which will encourage them to adopt laws and procedures which protect fit parent's constitutional rights. No longer should parents, who go before a state judge in a simple ministerial capacity,

lose their fundamental right to the care, custody and control of their children.

Question one, *Troxel,* was raised in page three of the complaint to the state district court and argued throughout including to the Utah Court of Appeals. Amendments Five and Fourteen are quoted on page 68 of the record. Pages 5-30 of the separate Appendix portrays the challenged state statutes in the same manner as before the state courts. The state court dismissed the case. The Court of Appeals said that applying federal law (*Troxel*) to these statutes is frivolous. See page 3 of the Appendix.

Question two, *Shinkoskey*, is central to this case; was raised on page 62 of the record in the lower court and argued extensively in the Utah Court of Appeals. The district court dismissed the case. Although *Shinkoskey* was decided before Petitioner commenced this action, the Court of Appeals notably fails to even mention it in their discussion. In that case the court applied the old *Englert v. Englert,* 576 P.2 1274 (1978) Utah Supreme Court case instead of *Troxel*.

Both Courts refused to apply the standards in *Troxel* to divorce proceedings or to address whether *Shinkoskey* gave too much power to the judges and too little to parents and failed to address the constitutional challenges raised. State statutes challenged were listed on pages 86-89, and detailed on pages 172-184 of the record.

Question three and four (First Amendment) were raised on page 59 of the record and is quoted in full on page

67 and were also quoted and briefed to the Court of Appeals. Although the Declaration of Independence (See pages 4-5 herein) was used in both courts to aid interpretation of the right to petition for redress, neither court applied the Federal First Amendment rights. Notably the Court of Appeals fails to address this Court's *Dodge v. Graville,* 533 U.S. 945 case wherein the Arizona court's decision was vacated for failing to apply *Troxel.*

Question five was covered the same as questions one and two in the record. *Troxel* is quoted repeatedly and the state statutes challenged were listed in detail. (See Appendix pages 5-30) The district court dismissed the case. Although central to this case, the Court of Appeals evades addressing how a judge's power with "no hint of limitation"is an unconstitutional holding over a fundamental right.

Question six (religious freedom, First Amendment) was raised on pages 187, 188 of the record in the district court as well clearly briefed in the Court of Appeals. Although Petitioner was questioned at oral argument about his religious beliefs, the Court of Appeals failed to elaborate the denial of this right in its decision. The district court failed to defend the First Amendment right.

Question seven (Universal Declaration of Human Rights) are identified by number and content on pages 3 and 4 of the oral argument transcript before the district court and raised on pages 3,9,10 of the Appellant's brief in the higher court. Both courts ignored this issue.

ARGUMENT

REASONS FOR GRANTING THE WRIT

I

Certiorari Should be Granted because Utah's divorce laws are repugnant to the Constitution, in that they allow the state to unreasonably interfere with fit parents constitutional rights, privileges and liberty interest in the care, custody and control of their children.

In *Troxel,* this Court struck down a Washington grandparent vitiation statute because it unreasonably interfered with fit parent's right to make decision concerning their children without state interference. This Court expressly limited the scope of its decision with respect to visitation rights:

> **We do not**, and need not, **define today the precise scope of the parental due process right in the visitation context**. . . . Because much state-court adjudication in this context occurs on a case-by-case basis, we would be hesitant to hold that specific nonparental visitation statutes violate the Due Process Clause as a *per se* matter. [*Troxel*, P. 2064]. (Emphasis added).

In *Troxel* this Court reaffirmed a long line of decisions which recognized a fit parent's constitutional right to make decisions concerning their children without unreasonable interference by the state:

> As we have explained, the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a "better" decision could be made. [*Troxel* 2064].

This petition is far broader than the visitation issue in *Troxel.* This Petition is not limited to visitation rights. As was true with Washington's over broad grandparent visitation statute, Utah's divorce laws are also breathtakingly broad, in that they permit the Court to overrule fit parent's decisions by its almost unbridled discretion.

As shown on pages 5 through 30 in the separate Appendix, high lighted in the same manner as before the state courts, Parents have been replaced by state judges. Not because of wrongdoing, but because the judge had a simple ministerial function to perform. Instead of being limited to visitation rights, Petitioner seeks to declare all of the Utah's divorce statutes which give breathtakingly broad powers to the court, to be unconstitutional.

Parents' constitutional rights to rear their children without unreasonable state interference are ignored in Utah Law. Petitioner did not challenge these laws until the Utah

Court of Appeals decided *Shinkoskey v. Shinkoskey,* 19 P.3d 1005 [2001]) and declared that a state judge's power has "no hint of limitation".

This Court should declare those Utah's divorce laws which give the court unbridled discretion and deprive parents of their right to an effective appeal to be unconstitutional. Utah's divorce rate is appalling. More than half of the marriages end in divorce. In addition, many couples live together and raise families without being married to retain control of their children. The present system broken and should be struck down. The majority of society will be, directly or indirectly, affected by the U.S. Supreme Court deciding this case. The well-being of countless children hangs in the balance.

Utah divorce laws, which give almost unlimited power to the trial judge without being required to give deference to the decisions by fit parents, are clearly unconstitutional. For example a trial court's power to require divorcing parents to purchase dental or other insurance, where other parents are not required to do so, violates due process, equal protection and various other constitutional rights. This Court should meet the problem head on by boldly declaring those divorce laws to be unconstitutional and set some guidelines to be followed by the legislature in enacting constitutionally appropriate laws.

This is an extremely important question of state and federal law which has not been, but should be, settled by this Court. The reasoning in *Troxel* and in *State ex rel. S. A* 37 P.3d 1166 (Ut.Ct.App.2001), a "sibling at risk" case",

in which the Utah Court of Appeals cited *Troxel* and recognize the rights of fit parents to govern their children and the constitutional limitations on the state intruding into family matters, should be applied to Utah Divorce Law. In that case, the Court of Appeals decided a case using *Troxel* that it had nothing to do with grandparent visitation, yet now refuses to apply *Troxel* to other unconstitutional laws.

The Utah Court of Appeals emphasized the fact that this Court found it unnecessary to address the broader problem as to the effect of its ruling in *Troxel* on state divorce laws, and also declined to address the constitutional issues in the *Joos, supra* decision. Instead it dismissed Petitioner's arguments by labeling them as "frivolous." A better approach would be for this Court to boldly recognize parents' right to make decisions concerning their children in a divorce setting, recognize the unconstitutionality of Utah's Divorce Laws, declare them to be unconstitutional and give the legislature guidelines by which they can enact constitutional divorce laws which protect fit parents right to make decisions concerning their children without unreasonable state burdens on this fundamental right.

II

Unconstitutional "chilling effect" of imposing sanctions for declaratory judgment action to determine whether a state law is repugnant to federal law.

Petitioner challenge the Court's imposition of URCP 11 sanctions based upon its determination that his claims were "frivolous". In its 6/12/03 Memorandum Decision [App. A], without discussing the litigation, the fact that in

most instances his efforts have been rebuffed without a reasoned opinion, the Ut. Ct. App.'s concluded that Dan's good faith attempts to obtain a meaningful, reasoned decision which discusses his specific legal issues were "frivolous". Dan's litigation was not "frivolous". The Utah Courts unconstitutionally sanctioned him for "petitioning the government for redress" by declaratory judgment as to whether Federal law as stated in *Troxel,* changed Utah's Divorce Laws and for asserting his religious freedom, both First Amendment rights. The Court of Appeals provides no other forum to apply *Troxel* and challenge *Shinkoskey* and therefore violates the overbreadth doctrine of the First Amendment. Why sanction someone who is just seeking to see that U.S. citizens are being treated with the dignity and respect that they are due?

III

Utah refusal to address issues raised by Petition violate his rights under the Universal Declaration of Human Rights, which has been signed by the United States.

28 U.S.C.A. § 1257(a), pertaining to granting of writs of certiorari, reads as follows:

§ 1257. State courts; certiorari

> **(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where** the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn

> in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or **where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.** (Emphasis added).

Because the United States sponsored and is a signatory to the Universal Declaration of Human rights, it comes within the highlighted portion of the above-quoted statute and is a separate ground for granting of certiorari. This Court should declare to what extent Utah is bound thereby.

Supreme Court, U.S.
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Respondent

Petition for Writ of Certiorari
To the Utah Court of Appeals

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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(Emphasis added as appeared before the Utah Court of Appeals)

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IN THE UTAH COURT OF APPEALS

—ooOoo—

Dan Rodney Joos	)	MEMORANDUM DECISION
	)	(not for official publication)
Plaintiff and Appellant	)	
v.	)	Case No. 20011005-CA
	)	
Piper C. Joos (Monte)	)	F I LE D
	)	(June 12, 2003)
Defendant & Appellee	)	
	)	2003 UT App 186

Third District, Salt Lake Department
The Honorable Tyrone Medley

Attorneys: Ronald C. Barker, Salt Lake City, for Appellant
Ephraim H. Fankhauser, Salt Lake City, for Appellee

Before Judges Jackson, Bench and Orme

ORME, Judge:

After nearly seven years of litigation, including a panoply of unsuccessful appeals to this court, The Utah Supreme Court, and the United States Supreme Court, Appellant once again urges us to strike down the entirety of Utah's divorce laws as "void, unconstitutional and unenforceable."[1] See Joos v. Joos, 1999 UT APP 312, cert.

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[1] In the underlying divorce action, the commissioner

Denied, 531 U.S. 822, 121 S .Ct. 66 (2000)

Ostensibly as justification for the current appeal, Appellant advances the startling proposition that our Utah divorce law jurisprudence, as well as Title 30 of the Utah Code, were "overruled" by the United States Supreme Court's decision in Troxel v. Granville, 530 U.S. 57, 120 S.Ct. 2054 (2000) (plurality opinion). We have read Troxel and not even the most fanciful interpretation of that case comports with the meaning suggested by Appellant.

Troxel invalidated a Washington nonparental visitation statute because it unconstitutionally "infringe[d] on the fundamental right of [the respondent-parent] to make child rearing decisions." Id. At 72-73, 120 S.Ct. At 2064. Wary of the potential implications of its decision, the Court unequivocally limited the holding of Troxel to its facts,

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ordered the Appellant "not file any more motions or pleadings...unless they were screened first...and authorize[d by him]." Undeterred, Appellant evidently filed a new law-suit. A similar injunction was issued by the trial court in the instant case "precluding [Appellant] from filing any further frivolous actions ...which involve issues that have already been decided." The Utah Supreme Court has condemned "oppressive litigation tactics," including pursuing and seeking remedies after all relevant legal issues have been settled," because such tactics "waste court resources and require opponents to spend a great deal of money in defense thereof." R & R Energies v. Mother Earth Indus., Inc., 936 P.2d 1068, 1081 n. 10 (Utah 1997) Quotation marks and citation omitted.

stating "We do not, and need not, define today the precise scope of the parental due process right in the visitation context...[Rather] the constitutional protections in this area are best 'elaborated with care'...on a case by case pronouncement, together with Troxel's otherwise obvious inapplicablility to Utah's divorce laws, we can only conclude that the argument Appellant strains to make is utterly frivolous. See Utah R. App. P. 33(b) (defining "a frivolous appeal" as "one is not grounded in fact, not warranted by existing law, or not based on good faith argument to extend, modify, or reverse existing law").

Likewise, we have considered Appellant's other claims, e.g., that the trial judge was guilty of "gender bias" and that he violated Appellant's religious liberty [.] due process and equal protection" rights, and found them to be entirely without merit. Therefore, we decline to address them further. See State v. Allen, 839 P.2d 291, 303 (Utah 1992) (stating that appellate courts need not "analyze and address in writing every issue or claim raised").

Appellee received an award of attorney fees below and requested attorney fees on appeal. Consistent with well-established precedent, that request is granted . See, e.g., R & Energies v. Mother Earth Indus., Inc., 936 P.2d 1068, 1081 (Utah 1997); Childs v. Childs, 967 P.2d 942, 947 (Utah Ct. App 1998), cet. Denied, 982 P.2d 88 (Utah 1999).

We remand for the award of attorney fees incurred by Appellee on appeal. Otherwise, the trial court's judgment is affirmed.

SIGNED
Gregory K. Orme, Judge

WE CONCUR:

SIGNED
Norman H. Jackson,
Presiding Judge

SIGNED
Russell W. Bench, Judge

IN THE SUPREME COURT, THE STATE OF UTAH

—ooOoo—

Dan Rodney Joos,
Petitioner,

v.

Piper C. Joos (Monte),
Respondent.

No. 20030596-SC
20011005-CA
010901910

ORDER

This matter is before the court upon a petition for Writ of Certiorari, filed pursuant to Rule 45, of the Utah Rules of Appellate Procedure.

IT IS HEREBY ORDERED that the Petition for the Writ of Certiorari is denied.

FOR THE COURT:

September 23, 2003
Date

Signed
Christine Durham
Chief Justice

UTAH CODE TITLE 30 (Emphasis added as fashioned before the state Courts)

30-1-17.2. Action to determine validity of marriage -- Orders relating to parties, property, and children -- Legitimacy of children.

(1) If the parties have accumulated any property or acquired any obligations subsequent to the marriage, if there is a genuine need arising from an economic change of circumstances due to the marriage, or if there are **children** born or expected, **the court** may make temporary and final orders, and subsequently modify the **orders**, relating to the parties, their property and obligations, the **children** and their custody and parent-time, and the support and maintenance of the parties and **children**, as may be equitable. (Emphasis added)

30-3-1(5). Procedure -- Residence -- Grounds.

(d) In all actions the **court** and **judge** have jurisdiction over the payment of alimony, the distribution of property, and the custody and maintenance of minor **children**, as the **courts** and **judges** possess in other actions for divorce. (Emphasis added)

30-3-5. Disposition of property -- Maintenance and health care of parties and children -- Division of debts -- Court to have continuing jurisdiction -- Custody and parent-time (1) When a decree of divorce is rendered, **the**

court may include in it equitable orders relating to the **children**, property, debts or obligations, and parties. **The court** shall include the following in every decree of divorce: (Emphasis added)

(a) an **order** assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent **children**;

(b) if coverage is or becomes available at a reasonable cost, an **order** requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children; (Emphasis added)

(2) **The court** may include, in an **order** determining **child** support, an **order** assigning financial responsibility for all or a portion of **child** care expenses incurred on behalf of the dependent **children**, necessitated by the employment or training of the custodial parent. If **the court** determines that the circumstances are appropriate and that the dependent **children** would be adequately cared for, it may include an **order** allowing the noncustodial parent to provide **child** care for the dependent **children**, necessitated by the employment or training of the custodial parent. (Emphasis added)

(3) **The court** has continuing jurisdiction to make subsequent changes or new **orders** for the custody of the **children** and their support, maintenance, health, and dental care, and for distribution of the property and obligations for debts as is reasonable and necessary.

(4) (a) In determining parent-time rights of parents and visitation rights of grandparents and other members of the immediate family, **the court** shall consider the **best interest of the child**. (Emphasis added)

(b) Upon a specific finding by **the court** of the need for peace officer enforcement, **the court** may include in an **order** establishing a parent-time or visitation schedule a provision, among other things, authorizing any peace officer to enforce a **court-ordered** parent-time or visitation schedule entered under this chapter.

(5) If a petition for modification of **child** custody or parent-time provisions of a **court order** is made and denied, **the court** shall **order** the petitioner to pay the reasonable attorneys' fees expended by the prevailing party in that action, if **the court** determines that the petition was without merit and not asserted or defended against in good faith.

(6) If a petition alleges substantial noncompliance with a parent-time **order** by a parent, or a visitation **order** by a grandparent or other member of the immediate family pursuant to Section **78-32-12.2** where a visitation or parent-time right has been previously granted by **the court**, **the court** may award to the prevailing party costs, including actual attorney fees and **court** costs incurred by the prevailing party because of the other party's failure to provide or exercise **court-ordered** visitation or parent-time. (Emphasis added)

30-3-10. Custody of children in case of separation or divorce -- Custody consideration.

(1) If a husband and wife having minor **children** are separated, or their marriage is declared void or dissolved, the **court** shall make an **order** for the future care and custody of the minor **children** as it considers appropriate.

(a) In determining custody, **the court** shall consider the **best interests of the child** and the past conduct and demonstrated moral standards of each of the parties.

(b) The **children** may not be required by either party to testify unless the trier of fact determines that extenuating circumstances exist that would necessitate the testimony of the **children** be heard and there is no other reasonable method to present their testimony.

(c) The court may inquire of the **children** and take into consideration the **children's** desires regarding future custody or parent-time schedules, but the expressed desires are not controlling and **the court** may determine the **children's** custody or parent-time otherwise. The desires of a **child** 16 years of age or older shall be given added weight, but is not the single controlling factor.

(d) Interviews with the **children** may be conducted by **the judge** in camera only with the prior consent of the parties.

(2) In awarding custody, **the court** shall consider, among other factors **the court** finds relevant, which parent is most likely to act in the **best interests of the child**, including allowing the **child** frequent and continuing contact with the noncustodial parent as **the court** finds appropriate.

(3) If **the court** finds that one parent does not desire custody of the child, or has attempted to permanently relinquish custody to a third party, it shall take that evidence into consideration in determining whether to award custody to the other parent.

(4) (a) **A court** may not discriminate against a parent due to a disability, as defined in Section **57-21-2**, in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.

(b) If **a court** takes a parent's disability into account in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award

of custody, the parent with a disability may rebut any evidence, presumption, or inference arising therefrom by showing that:
(i) the disability does not significantly or substantially inhibit the parent's ability to provide for the physical and emotional needs of the child at issue; or
(ii) the parent with a disability has sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of the **child** at issue.
(c) Nothing in this section may be construed to apply to:
(i) abuse, neglect, or dependency proceedings under Title 62A, Chapter 4a, Child and Family Services, or Title 78, Chapter 3a, Juvenile Court Act of 1996; or

(ii) adoption proceedings under Title 78, Chapter 30, Adoption. (Emphasis added)

30-3-10.1. Joint legal custody defined. In this chapter, "joint legal custody":
(1) means the sharing of the rights, privileges, duties, and powers of a parent by both parents, where specified;
(2) may include an award of exclusive authority by **the court** to one parent to make specific decisions;(3) does not affect the physical custody of the **child** except as specified in the **order** of joint legal custody;
(4) is not based on awarding equal or nearly equal periods of physical custody of and access to the **child** to each of the parents, as the **best interest of the child** often requires that a primary physical residence for the **child** be designated; and
(5) does not prohibit **the court** from specifying one parent as the primary caretaker and one home as the primary residence of the **child.** (Emphasis added)

30-3-10.2. Joint legal or physical custody order -- Factors for court determination -- Public assistance.

(1) The court may order joint legal custody or joint physical custody or both if the parents have filed a parenting plan in accordance with Section **30-3-10.8** and it determines that joint legal custody or joint physical custody or both is in the **best interest of the child**.

(2) In determining whether the **best interest of a child** will be served by ordering joint legal custody, the court shall consider the following factors:

(a) whether the physical, psychological, and emotional needs and development of the **child** will benefit from joint legal custody;

(b) the ability of the parents to give first priority to the welfare of the **child** and reach shared decisions in the **child's best interest**;

(c) whether each parent is capable of encouraging and accepting a positive relationship between the **child** and the other parent;

(d) whether both parents participated in raising the **child** before the divorce;

(e) the geographical proximity of the homes of the parents;

(f) the preference of the **child** if the **child** is of sufficient age and capacity to reason so as to form an intelligent preference as to joint legal custody;

(g) the maturity of the parents and their willingness and ability to protect the **child** from conflict that may arise between the parents; and

(h) any other factors the court finds relevant.

(3) The determination of the **best interest of the child** shall be by a preponderance of the evidence.

(4) **The court** shall inform both parties that:
(a) an **order** for joint legal custody may preclude eligibility for cash assistance provided under Title 35A, Chapter 3, Employment Support Act; and
(b) if cash assistance is required for the support of **children** of the parties at any time subsequent to an **order** of joint legal custody, **the order** may be terminated under Section **30-3-10.4**.
(5) **The court** may **order** that where possible the parties attempt to settle future disputes by a dispute resolution method before seeking enforcement or modification of the terms and conditions of the order of joint legal custody or joint physical custody through litigation, except in emergency situations requiring ex parte orders to protect the **child.**

30-3-10.3. Terms of joint legal custody order.
(1) Unless **the court** orders otherwise, before a final **order** of joint legal custody is entered both parties shall attend the mandatory course for divorcing parents, as provided in Section **30-3-11.3**, and present a certificate of completion from the course to **the court.**
(2) An **order** of joint legal custody shall provide terms **the court** determines appropriate, which may include specifying:
(a) either the county of residence of the **child,** until alteredby further **order** of **the court,** or the custodian who has the sole legal right to determine the residence of the **child;**
(b) that the parents shall exchange information concerning the health, education, and welfare of the **child,** and where possible, confer before making decisions concerning any of these areas;

(c) the rights and duties of each parent regarding the **child's** present and future physical care, support, and education;
(d) provisions to minimize disruption of the **child's** attendance at school and other activities, his daily routine, and his association with friends; and
(e) as necessary, the remaining parental rights, privileges, duties, and powers to be exercised by the parents solely, concurrently, or jointly.
(3) **The court** shall, where possible, include in the **order**, the terms of the parenting plan provided in accordance with Section **30-3-10.8**.
(4) Any parental rights not specifically addressed **by the court order** may be exercised by the parent having physical custody of the **child** the majority of the time.
(5) (a) The appointment of joint legal custodians does not impair or limit the authority of the **court** to **order** support of the **child,** including payments by one custodian to the other.
(b) An **order** of joint legal custody, in itself, is not grounds for modifying a support **order**.
(c) The agreement shall contain a dispute resolution procedure the parties agree to use before seeking enforcement or modification of the terms and conditions of the **order** of joint legal custody through litigation, except in emergency situations requiring **ex parte orders** to protect the **child.** (Emphasis added)

30-3-10.4. Modification or termination of order.
(1) On the motion of one or both of the joint legal custodians **the court** may, after a hearing, modify an **order** that established joint legal custody if:
(a) the circumstances of the **child** or one or both custodians have materially and substantially changed since the entry of

the **order** to be modified, or the **order** has become unworkable or inappropriate under existing circumstances; and

(b) a modification of the terms and conditions of the decree would be an improvement for and in **the best interest of the child**.

(2) The **order** of joint legal custody shall be terminated by **order** of **the court** if both parents file a motion for termination. At the time of entry of an **order** terminating joint legal custody, the court shall enter an order of sole legal custody under Section **30-3-10**. All related issues, including parent-time and **child** support, shall also be determined and ordered by **the court**.

(3) If **the court** finds that an action under this section is filed or answered frivolously and in a manner designed to harass the other party, **the court** shall assess attorney's fees as costs against the offending party. (Emphasis added)

30-3-11.2. Appointment of counsel for child. If, in any action before **any court** of this state involving the custody or support of a **child**, it shall appear in the **best interests of the child** to have a separate exposition of the issues and personal representation for the **child, the court** may appoint counsel to represent the **child** throughout the action, and theattorney's fee for such representation may be taxed as a cost of the action. (Emphasis added)

30-3-11.3. Mandatory educational course for divorcing parents -- Purpose -- Curriculum -- Exceptions. (1) There is established a mandatory course for divorcing parents as a pilot program in the third and fourth judicial districts to be administered by the Administrative Office of

the Courts from July 1, 1992, to June 30, 1994. On July 1, 1994, an approved course shall be implemented in all judicial districts. The mandatory course is designed to educate and sensitize divorcing parties to their **children's** needs both during and after the divorce process.

(2) The Judicial Council shall adopt rules to implement and administer this program.

(3) As a prerequisite to receiving a divorce decree, both parties are required to attend a mandatory course on their **children's** needs after filing a complaint for divorce and receiving a docket number, unless waived under Section **30-3-4**. If that requirement is waived, **the court** may permit the divorce action to proceed.

(4) The mandatory course shall instruct both parties about divorce and its impacts on:

(a) their **child** or **children**;

(b) their family relationship; and

(c) their financial responsibilities for their **child or children**.

(5) The Administrative Office of **the Courts** shall administer the course pursuant to Title 63, Chapter 56, Utah Procurement Code, through private or public contracts and organize the program in each of Utah's judicial districts. The contracts shall provide for the recoupment of administrative expenses through the costs charged to individual parties, pursuant to Subsection (7).

(6) A certificate of completion constitutes evidence to **the court** of course completion by the parties.

(7) (a) Each party shall pay the costs of the course to the independent contractor providing the course at the time and place of the course. A fee of $8 shall be collected, as part of the course fee paid by each participant, and deposited in the

Children's Legal Defense Account, described in Section **63-63a-8**.

(b) Each party who is unable to pay the costs of the course may attend the course without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of impecuniosity filed in the **district court.** In those situations, the independent contractor shall be reimbursed for its costs from the appropriation to the Administrative Office of **the Courts** for "Mandatory Educational Course for Divorcing Parents Program." Before a decree of divorce may be entered, **the court** shall make a final review and determination of impecuniosity and may order the payment of the costs if so determined.

(8) Appropriations from the General Fund to the Administrative Office of **the Courts** for the "Mandatory Educational Course for Divorcing Parents Program" shall be used to pay the costs of an indigent parent who makes a showing as provided in Subsection (7)(b).

(9) The Administrative Office of **the Courts** shall adopt a program to evaluate the effectiveness of the mandatory educational course. Progress reports shall be provided annually to the Judiciary Interim Committee. (Emphasis added)

30-3-33. Advisory guidelines.

In addition to the parent-time schedules provided in Sections **30-3-35** and **30-3-35.5**, advisory guidelines are suggested to govern all parent-time arrangements between parents. These advisory guidelines include:

(1) parent-time schedules mutually agreed upon by both parents are preferable to a **court-**imposed solution;

(2) the parent-time schedule shall be utilized to maximize the continuity and stability of the **child's** life;
(3) special consideration shall be given by each parent to make the **child** available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the **child** or in the life of either parent which may inadvertently conflict with the parent-time schedule;
(4) the noncustodial parent shall pick up the child at the times specified and return the child at the times specified, and the **child's** regular school hours shall not be interrupted;
(5) the custodial parent shall have the **child** ready for parent-time at the time he is to be picked up and shall be present at the custodial home or shall make reasonable alternate arrangements to receive the **child** at the time he is returned;
(6) **the court** may make alterations in the parent-time schedule to reasonably accommodate the work schedule of both parents and may increase the parent-time allowed to the noncustodial parent but shall not diminish the standardized parent-time provided in Sections **30-3-35** and **30-3-35.5**;
(7) **the court** may make alterations in the parent-time schedule to reasonably accommodate the distance between the parties and the expense of exercising parent-time;
(8) neither parent-time nor **child** support is to be withheld due to either parent's failure to comply with a **court-ordered** parent-time schedule;
(9) the custodial parent shall notify the non-custodial parent within 24 hours of receiving notice of all significant school, social, sports, and community functions in which the **child**

is participating or being honored, and the non-custodial parent shall be entitled to attend and participate fully;
(10) the non-custodial parent shall have access directly to all school reports including preschool and daycare reports and medical records and shall be notified immediately by the custodial parent in the event of a medical emergency;
(11) each parent shall provide the other with his current address and telephone number within 24 hours of any change;
(12) each parent shall permit and encourage liberal telephone contact during reasonable hours and uncensored mail privileges with the **child**;
(13) parental care shall be presumed to be better care for the **child** than surrogate care and **the court** shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able, to provide child care;
(14) each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the non-custodial parent with the name, current address, and telephone number of all surrogate care providers unless **the court** for good cause orders otherwise; and
(15) each parent shall be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the **child** on the religious holiday. (Emphasis added)

30-3-34. Best interests -- Rebuttable presumption.
(1) If the parties are unable to agree on a parent-time schedule, **the court** may establish a parent-time schedule consistent with the **best interests of the child.**

(2) The advisory guidelines as provided in Section **30-3-33** and the parent-time schedule as provided in Sections **30-3-35** and **30-3-35.5** shall be presumed to be in the **best interests of the child**. The parent-time schedule shall be considered the minimum parent-time to which the noncustodial parent and the **child** shall be entitled unless a parent can establish otherwise by a preponderance of the evidence that more or less parent-time should be awarded based upon any of the following criteria:

(a) parent-time would endanger the **child's** physical health or significantly impair the child's emotional development;

(b) the distance between the residency of the **child** and the noncustodial parent;

(c) a substantiated or unfounded allegation of **child** abuse has been made;

(d) the lack of demonstrated parenting skills without safeguards to ensure the **child's** well-being during parent-time;

(e) the financial inability of the noncustodial parent to provide adequate food and shelter for the **child** during periods of parent-time;

(f) the preference of the **child** if the court determines the **child** to be of sufficient maturity;

(g) the incarceration of the noncustodial parent in a county jail, secure youth corrections facility, or an adult corrections facility;

(h) shared interests between the **child** and the non-custodial parent;

(i) the involvement of the noncustodial parent in the school, community, religious, or other related activities of the **child**;

(j) the availability of the noncustodial parent to care for the **child** when the custodial parent is unavailable to do so

because of work or other circumstances;
(k) a substantial and chronic pattern of missing, canceling, or denying regularly scheduled parent-time;
(l) the minimal duration of and lack of significant bonding in the parents' relationship prior to the conception of the **child;**
(m) the parent-time schedule of siblings;(n) the lack of reasonable alternatives to the needs of a nursing **child**; and
(o) any other criteria **the court** determines relevant to the **best interests of the child**.
(3) **The court** shall enter the reasons underlying its order for parent-time that:
(a) incorporates a parent-time schedule provided in Section **30-3-35** or **30-3-35.5**; or
(b) provides more or less parent-time than a parent-time schedule provided in Section **30-3-35** or **30-3-35.5**.
(4) Once the parent-time schedule has been established, the parties may not alter the schedule except by mutual consent of the parties or a **court order**. (Emphasis added)

30-3-35. Minimum schedule for parent-time for children 5 to 18 years of age.
(1) The parent-time schedule in this section applies to **children** 5 to 18 years of age.
(2) If the parties do not agree to a parent-time schedule, the following schedule shall be considered the minimum parent-time to which the non-custodial parent and the **child** shall be entitled:
(a) (i) one weekday evening to be specified by the non-custodial parent or **the court** from 5:30 p.m. until 8:30 p.m.; or
(ii) at the election of the noncustodial parent, one weekday

from the time the child's school is regularly dismissed until 8:30 p.m., unless the court directs the application of Subsection (2)(a)(i);

(b) (i) alternating weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year; or

(ii) at the election of the non-custodial parent, from the time the **child's** school is regularly dismissed on Friday until 7 p.m. on Sunday, unless the court directs the application of Subsection (2)(b)(i);

(c) holidays take precedence over the weekend parent-time, and changes shall not be made to the regular rotation of the alternating weekend parent-time schedule;

(d) if a holiday falls on a regularly scheduled school day, the non-custodial parent shall be responsible for the **child's** attendance at school for that school day;

(e) (i) if a holiday falls on a weekend or on a Friday or Monday and the total holiday period extends beyond that time so that the **child** is free from school and the parent is free from work, the non-custodial parent shall be entitled to this lengthier holiday period; or

(ii) at the election of the non-custodial parent, parent-time over a scheduled holiday weekend may begin from the time the **child's** school is regularly dismissed at the beginning of the holiday weekend until 7 p.m. on the last day of the holiday weekend;

(f) in years ending in an odd number, the non-custodial parent is entitled to the following holidays:

(i) **child's** birthday on the day before or after the actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion

of the non-custodial parent, he may take other siblings along for the birthday;
(ii) Martin Luther King, Jr. beginning 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the non-custodial parent is completely entitled;(iii) spring break or Easter holiday beginning at 6 p.m. on the day school lets out for the holiday until 7 p.m. on the Sunday before school resumes;
(iv) Memorial Day beginning 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the non-custodial parent is completely entitled;
(v) July 24th beginning 6 p.m. on the day before the holiday until 11 p.m. on the holiday;
(vi) Veteran's Day holiday beginning 6 p.m. the day before the holiday until 7 p.m. on the holiday; and
(vii) the first portion of the Christmas school vacation as defined in Subsection **30-3-32**(3)(b) plus Christmas Eve and Christmas Day until 1 p.m., so long as the entire holiday is equally divided;

(g) in years ending in an even number, the non-custodial parent is entitled to the following holidays:

(i) **child's** birthday on actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the non-custodial parent, he may take other siblings along for the birthday;
(ii) Washington and Lincoln Day beginning at 6 p.m. on Friday until 7 p.m. on Monday unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) July 4th beginning at 6 p.m. the day before the holiday until 11 p.m. on the holiday;
(iv) Labor Day beginning at 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;
(v) the fall school break, if applicable, commonly known as U.E.A. weekend beginning at 6 p.m. on Wednesday until Sunday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;
(vi) Columbus Day beginning at 6 p.m. the day before the holiday until 7 p.m. on the holiday;
(vii) Thanksgiving holiday beginning Wednesday at 7 p.m. until Sunday at 7 p.m; and
(viii) the second portion of the Christmas school vacation as defined in Subsection **30-3-32**(3)(b) plus Christmas day beginning at 1 p.m. until 9 p.m., so long as the entire Christmas holiday is equally divided;
(h) Father's Day shall be spent with the natural or adoptive father every year beginning at 9 a.m. until 7 p.m. on the holiday;
(i) Mother's Day shall be spent with the natural or adoptive mother every year beginning at 9 a.m. until 7 p.m. on the holiday;
(j) extended parent-time with the noncustodial parent may be:
(i) up to four weeks consecutive at the option of the noncustodial parent;
(ii) two weeks shall be uninterrupted time for the noncustodial parent; and
(iii) the remaining two weeks shall be subject to parent-time for the custodial parent consistent with these guidelines;

(k) the custodial parent shall have an identical two-week period of uninterrupted time during the **children's** summer vacation from school for purposes of vacation;
(l) if the **child** is enrolled in year-round school, the noncustodial parent's extended parent-time shall be 1/2 of the vacation time for year-round school breaks, provided the custodial parent has holiday and phone visits;
(m) notification of extended parent-time or vacation weeks with the **child** shall be provided at least 30 days in advance to the other parent; and
(n) telephone contact shall be at reasonable hours and for reasonable duration.
(3) Any elections required to be made in accordance with this section by either parent concerning parent-time shall be made a part of the decree and made a part of the parent-time order. (Emphasis added)

30-3-35.5. Minimum schedule for parent-time for children **under five years of age.**
(1) The parent-time schedule in this section applies to **children** under five years old.
(2) If the parties do not agree to a parent-time schedule, the following schedule shall be considered the minimum parent-time to which the noncustodial parent and the **child** shall be entitled:
(a) for children under five months of age:
(i) six hours of parent-time per week to be specified by **the court** or the noncustodial parent preferably:
(A) divided into three parent-time periods; and
(B) in the custodial home, established **child** care setting, or other environment familiar to the **child**; and
(ii) two hours on holidays and in the years specified in

Subsections **30-3-35**(2)(f) through (i) preferably in the custodial home, the established **child** care setting, or other environment familiar to the **child;**

(b) for **children** five months of age or older, but younger than ten months of age:

(i) nine hours of parent-time per week to be specified by **the court** or the noncustodial parent preferably:

(A) divided into three parent-time periods; and

(B) in the custodial home, established **child** care setting, or other environment familiar to the **child;** and

(ii) two hours on the holidays and in the years specified in Subsections **30-3-35**(2)(f) through (i) preferably in the custodial home, the established child care setting, or other environment familiar to the **child;**

(c) for **children** ten months of age or older, but younger than 18 months of age:

(i) one eight hour visit per week to be specified by the noncustodial parent or **court;**

(ii) one three hour visit per week to be specified by the noncustodial parent or **court;**

(iii) eight hours on the holidays and in the years specified in Subsections **30-3-5**(2)(f) through (i); and

(iv) brief phone contact with the noncustodial parent at least two times per week;

(d) for **children** 18 months of age or older, but younger than three years of age:

(i) one weekday evening between 5:30 p.m. and 8:30 p.m. to be specified by the noncustodial parent or **court;** however, if the **child** is being cared for during the day outside his regular place of residence, the noncustodial parent may, with advance notice to the custodial parent,

pick up the child from the caregiver at an earlier time and return him to the custodial parent by 8:30 p.m.;
(ii) alternative weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year;
(iii) parent-time on holidays as specified in Subsections **30-3-35**(2)(c) through (i);

30-3-37. Relocation.
(1) When either parent decides to move from the state of Utah or 150 miles or more from the residence specified in **the court's** decree, that parent shall provide reasonable advance written notice of the intended relocation to the other parent.
(2) **The court** may, upon motion of any party or upon **the court's** own motion, schedule a hearing with notice to review the parent-time schedule as provided in Section **30-3-35** and make appropriate **orders** regarding the parent-time and costs for parent-time transportation.
(3) In determining the parent-time schedule and allocating the transportation costs, the court shall consider:
(a) the reason for the parent's relocation;
(b) the additional costs or difficulty to both parents in exercising parent-time;
(c) the economic resources of both parents; and
(d) other factors **the court** considers necessary and relevant.
(4) Upon the motion of any party, **the court** may **order** theparent intending to move to pay the costs of transportation for:
(a) at least one visit per year with the other parent; and
(b) any number of additional visits as determined equitable by **the court.**

(5) Unless otherwise ordered by the court, upon the relocation of one of the parties the following schedule shall be the minimum requirements for parent-time with a school-age **child**:

(a) in years ending in an odd number, the **child** shall spend the following holidays with the noncustodial parent:

(i) Thanksgiving holiday beginning Wednesday until Sunday; and

(ii) the fall school break, if applicable, beginning the last day of school before the holiday until the day before school resumes;

(b) in years ending in an even number, the **child** shall spend the following holidays with the noncustodial parent:

(i) the entire winter school break period; and

(ii) Spring break beginning the last day of school before the holiday until the day before school resumes; and

(c) extended parent-time equal to 1/2 of the summer or off-track time for consecutive weeks. The week before school begins may not be counted as part of the summer period.

(6) Upon the motion of any party, the court may order uninterrupted parent-time with the noncustodial parent for a minimum of 30 days during extended parent-time, unless the court finds it is not in the **best interests of the child**. If the court orders uninterrupted parent-time during a period not covered by this section, it shall specify in its order which parent is responsible for the **child's** travel expenses.

(7) Unless otherwise ordered by the court, the relocating party shall be responsible for all the **child's** travel expenses relating to Subsections (5)(a) and (b) and 1/2 of the **child's** travel expenses relating to Subsection (5)(c), provided the noncustodial party is current on all support obligations. If

the noncustodial party has been found in contempt for not being current on all support obligations, he shall be responsible for all of the **child's** travel expenses under Subsection (5), unless **the court** rules otherwise. Reimbursement by either responsible party to the other for the **child's** travel expenses shall be made within 30 days of receipt of documents detailing those expenses.
(8) may apply this provision to any preexisting decree of divorce.

(9) Any action under this section may be set for an expedited hearing.

30-5-2. Visitation rights of grandparents.
(1) Grandparents have standing to bring an action in district **court** by petition, requesting visitation in accordance with the provisions and requirements of this section. Grandparents may also file a petition for visitation rights in a pending divorce proceeding or other proceeding involving custody and visitation issues.
(2) There is a rebuttable presumption that a parent's decision with regard to grandparent visitation is in the **grandchild's best interests**. However, **the court** may override the parent's decision and grant the petitioner reasonable rights of visitation if **the court** finds that the petitioner has rebutted the presumption based upon factors which **the court** considers to be relevant, such as whether:
(a) the petitioner is a fit and proper person to have visitation with the **grandchild;**
(b) visitation with the **grandchild** has been denied or unreasonably limited;
(c) the parent is unfit or incompetent;

(d) the petitioner has acted as the **grandchild's** custodian or caregiver, or otherwise has had a substantial relationship with the **grandchild,** and the loss or cessation of that relationship is likely to cause harm to the **grandchild;**
(e) the petitioner's **child,** who is a parent of the **grandchild,** has died, or has become a noncustodial parent through divorce or legal separation;
(f) the petitioner's **child,** who is a parent of the **grandchild,** has been missing for an extended period of time; or
(g) visitation is in the **best interest of the grandchild.**
(3) The adoption of a **grandchild** by the **grandchild's** stepparent does not diminish or alter visitation rights previously **ordered** under this section.
(4) Subject to the provisions of Subsections (2) and (3), the **court** may inquire of the **grandchild** and take into account the **grandchild's** desires regarding visitation.
(5) On the petition of a grandparent or the legal custodian of a **grandchild the court** may, after a hearing, modify an **order** regarding grandparent visitation if:
(a) the circumstances of the **grandchild,** the grandparent, or the custodian have materially and substantially changed since the entry of the **order** to be modified, or the **order** has become unworkable or inappropriate under existing circumstances; and
(b) **the court** determines that a modification is appropriate based upon the factors set forth in Subsection (2).
(6) Grandparents may petition **the court** as provided in Section **78-32-12.2** to remedy a parent's wrongful noncompliance with a visitation **order.**

78-45-7.15. Medical expenses.
(1) **The court** shall **order** that insurance for the medical

expenses of the minor children be provided by a parent if it is available at a reasonable cost.

(2) In determining which parent shall be ordered to maintain insurance for medical expenses, **the court** or administrative agency may consider the:

(a) reasonableness of the cost;

(b) availability of a group insurance policy;

(c) coverage of the policy; and

(d) preference of the custodial parent.

(3) The **order** shall require each parent to share equally the out-of-pocket costs of the premium actually paid by a parent for the **children's** portion of insurance.

(4) The **children's** portion of the premium is a per capita share of the premium actually paid. The premium expense for the **children** shall be calculated by dividing the premium amount by the number of persons covered under the policy and multiplying the result by the number of **children** in the instant case.

(5) The **order** shall require each parent to share equally all reasonable and necessary uninsured medical expenses, including deductibles and copayments, incurred for the dependent **children.**

(6) The parent ordered to maintain insurance shall provide verification of coverage to the other parent, or to the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., upon initial enrollment of the dependent children, and thereafter on or before January 2 of each calendar year. The parent shall notify the other parent, or the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., of any change of insurance carrier, premium, or benefits

within 30 calendar days of the date he first knew or should have known of the change.
(7) A parent who incurs medical expenses shall provide written verification of the cost and payment of medical expenses to the other parent within 30 days of payment.
(8) In addition to any other sanctions provided by **the court**, a parent incurring medical expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if that parent fails to comply with Subsections (6) and (7).

78-45-7.21. Award of tax exemption for dependent children. (1) No presumption exists as to which parent should be awarded the right to claim a **child or children** as exemptions for federal and state income tax purposes. Unless the parties otherwise stipulate in writing, **the court** or administrative agency shall award in any final order the exemption on a case-by-case basis.
(2) In awarding the exemption, **the court** or administrative agency shall consider:
(a) as the primary factor, the relative contribution of each parent to the cost of raising the child; and
(b) among other factors, the relative tax benefit to each parent.
(3) Notwithstanding Subsection (2), **the court** or administrative agency may not award any exemption to the noncustodial parent if that parent is not current in his **child** support obligation, in which case **the court** or administrative agency may award an exemption to the custodial parent.
(4) An exemption may not be awarded to a parent unless the award will result in a tax benefit to that parent.

Supreme Court, U.S.
FILED
MAR 17 2004
OFFICE OF THE CLERK

(3)

No. 03-908

In the

Supreme Court of the United States

DAN RODNEY JOOS,

Petitioner

v.

PIPER C. JOOS (MONTE),

Respondent

On Petition for Writ of Certiorari
To the Utah Court of Appeals

PETITION FOR REHEARING

(Rule 34.1(f) requires Petitioner's address, but Dan is homeless w/o a phone using a family friend's address)

Dan Rodney Joos, *Pro Se Petitioner*
c/o Dr. Gene R. Fuller
2446 E. Sabal Avenue
Salt Lake City, Utah 84121
Telephone (801) 944-5870

GROUNDS

In light of recent events of anarchy sweeping this country, it is probably too late for the Supreme Court to have any role in upholding marriage, children's rights and welfare. The President of the United States has called for an Amendment to the U.S. Constitution to strengthen marriage and families. Respectfully, the Justices of the U.S. Supreme Court are asked to grant the petition for writ of certiorari in this case to establish and protect the fundamental and constitutional right of every child to be raised by both biological parents; a mother **and** a father.

PROPOSED CONSTITUTIONAL AMENDMENT

Inasmuch as the Supreme Court failed to protect innocent children from harm, the **power to define** is reserved to **the people** through their elected representatives.

The principle of government by the people, for the people and of the people is reaffirmed.

By two-thirds (2/3) vote of the congress and signature of the president, governing bodies within the United States are bound to definitions established by the people.

For failure to protect the welfare of children, Justice John Paul Stevens is removed from the Supreme Court.

ARGUMENT

Nothing is more important to civilization than the family!

This Court can defend the most vulnerable, innocent and defenseless of its citizens or watch as parents band together to change the Constitution and create new guardians to protect their children.

Examples of the effect of the proposed amendment could include:

1. "Virtual" child pornography is defined as actual child pornography.

2. Marriage is defined as the union of one man and one woman.

3. Prayer is defined as speech between people and God. Prayer is not religious speech subject to the separation of church and state.

4. When a man and woman choose a relationship that creates children, unborn human life is defined as protected life under the Constitution subject to state regulation.

5. The Ten Commandments is defined as a historical document.

6. Flag-burning and cross-burning is defined as unprotected speech.

7. **The right of every child to be raised by their own mother and father is defined as a fundamental right**.

8. Public advertising of tobacco and alcohol is defined as unprotected speech subject to state regulation.

9. Pornography is defined as harmful to children subject to state regulation.

The great movement in this nation to amend State and Federal Constitutions before the U.S. Supreme Court has addressed the issue is proof that parents have lost faith in this Court. This lack of faith is well deserved.

The U.S. Supreme Court's recent decisions are to be blamed and this Court, as are we, should be abhorred that so many people wish to amend State and Federal Constitutions before relying on this Court.

There can be no independence in the judicial branch without integrity. Americans no longer believe in the integrity of this Court because this Court fails to defend children and upholds, over and over, those who harm them.

This Court is failing to see a new generation raised who are willing to be law-abiding and grateful for what the founding fathers provided.

The spreading anarchy that appeared in San Francisco is the direct result of the decisions of this Court and Americans have every right to amend the Constitution and weaken the ability of this Court to destroy marriage and families.

When a few activist judges in Massachusetts follow this Court's lead in forgetting the principles of this republic and democracy, then the people have no choice but to rise up and stem this evil tide.

Before it is too late, this Court should use its discretion wisely and with due diligence grant the petition for writ of certiorari in this case. Make way for Utah and other state judges to establish and protect the rights of faultless children to be raised and to have substantial relationships with their biological mothers and fathers.

The U.S. Supreme Court does not feel bound by the correct principles of the Bible, yet often its justices quote and make reference to the Bible in their decisions.

The following appears in the eighteenth chapter of St Matthew: (emphasis added)

> At the same time came the disciples unto Jesus, saying, Who is the greatest in the kingdom of heaven?
>
> 2. And Jesus called a **little child** unto him, and set him in the midst of them,
>
> 3. And said, Verily I say unto you, Except ye be converted, and become as **little children,** ye shall not enter into the kingdom of heaven.
>
> 4. Whosoever therefore shall humble himself as this **little child,** the same is greatest in the kingdom of heaven.
>
> 5. And whoso shall receive one such **little child** in my name receiveth me.
>
> 6. But whoso shall offend one of these **little ones** which believe in me, it were better for him that a millstone were hanged about his neck, and *that* he were drowned in the depth of the sea.
>
> 7. ¶ Woe unto the world because of offences! for it must needs be that offences come; but woe to that man by whom the offence cometh!
>
> 8. Wherefore if thy hand or thy foot offend thee, cut them off, and cast *them* from thee; it is better for thee to enter into

> life halt or maimed, rather than having two hands or two feet to be cast into everlasting fire.
>
> 9. And if thine eye offend thee, pluck it out, and cast *it* from thee: it is better for thee to enter into life with one eye, rather than having two eyes to be cast into hell fire.
>
> 10. Take heed that ye despise not one of these **little ones**; for I say unto you, That in heaven their angels do always behold the face of my Father which is in heaven.

Will this Court continue to allow harm to little children because they are unable to write in law journals, file lawsuits, or otherwise stand in defense of their God-given rights?

In conclusion, in light of recent events, this Court is respectfully asked to grant this petition for writ of certiorari and take this immediate opportunity to establish and protect the right of every child to be raised and have a substantial relationship with both biological parents. Perhaps parents will not need to amend the Constitution.

(Rule 34.1(f) requires Petitioner's address, but Dan is homeless w/o a phone - Please use family Friend's address).

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CERTIFICATE
(Rule 44.2)

Petitioner certifies that this Petition for Rehearing of this Court's Order Denying Petition for Writ of Certiorari is restricted to the grounds specified in this paragraph. This petition is presented in good faith and not for delay.

_____

Dan Rodney Joos, *Pro Se*